

The screening tools that were presented today have the potential to increase the efficacy of the judicial system in changing the behavior of impaired drivers. The justice system acts as a huge net to scoop up impaired drivers. It starts with law enforcement, when patrol officers encounter an impaired driver and charge them with a crime. The defendant comes into the justice system, the prosecutors prosecute and the defense attorneys defend and ultimately a determination is made of guilty or not guilty. If they are guilty, it is the duty of the judge to determine an appropriate sentence.

We spend substantial sums of money on law enforcement to catch offenders, and on prosecutors, defense attorneys, court staff, court facilities and judges and jurors to adjudicate the offenders. But it then falls to the judiciary to do something with the offender. It's the job of the judge to determine the sentence that will increase public safety. If the judiciary is not adopting evidence based sentencing practices that are proven to reduce the likelihood of reoffending, then, the entire process becomes "catch and release".

There continues to be a debate in the criminal justice system on what the judicial response should be to impaired driving. There are judges who believe that you have done your duty to society by incarcerating the offender, and every state has a statutory scheme that includes increasing terms of incarceration as the number of prior offenses grows. The problem with that is that there really isn't any research that supports the theory that incarceration, in and of itself, will alter future behavior *in a positive way*. In fact there is research that supports the opposite finding, that the longer the term of incarceration, the greater the likelihood of recidivism.

The good news is that incarceration alone isn't the trend. Many judges across the country have availed themselves of the research that is being generated by those courts that have adopted innovative means of intervening, such as the DWI or sobriety courts and have started to adopt those evidence based sentencing practices that have been shown to reduce recidivism in the impaired driving population.

While that is good news it isn't the end of the story. As you are probably aware, impaired driving is one of the most commonly charged crimes in any jurisdiction, which means that most jurisdictions are inundated with impaired driving offenses. In many jurisdictions, judges are assigned hundreds of impaired driving cases annually. Despite the fact that judges take cases of impaired driving very seriously because of the risk the impaired driver represents to our communities, the amount of intervention you can apply to any given case becomes a question of resources.

As you have just heard, most people (about 75%) who are charged with impaired driving will never reenter the justice system. Whatever lesson they hadn't learned from the public education that has gone on over the last several decades, they learn, and they change their behavior. They are the low hanging fruit. We now know that the likely repeat offender is the person that is engaging in high risk behaviors, of which impaired driving is often just one, and these behaviors result from lack of impulse control, various cognitive deficits, mental health disorder and antisocial thinking and behavior.

When I first decided to get serious about impaired driving, I decided to adopt the DWI court model, which is based upon the therapeutic drug court model. We knew that of all the cases that came into our court every year, only about 35% were likely to reoffend. Our assumption was that that 35% represented those people that presented with an addiction to drugs or alcohol. So, when a person was convicted of impaired driving, we put them through a screening and assessment to determine their level of addiction. Again, our assumption was that it was their addiction, and inability to stay sober that was the precipitating factor in their criminal behavior of impaired driving. It just made sense; if you are drunk or high all the time, then chances are you are going to get behind the wheel of a car when you were impaired.

Then I moved from a misdemeanor court, where I was seeing 1st and 2nd offenses to a felony court where I was seeing 3rd offenses and up. I was predisposed to believe that *all* of the people I was going to see on that docket had serious substance abuse disorders. However, what I found was that the percentage of people with serious substance abuse disorders on my felony docket

was about the same as on the misdemeanor level. I realized that when defendants on the felony docket were told they had to stop drinking while they were on probation, most had very little problem following that order. And I knew what they were up to because they had transdermal alcohol tethers on their ankles.

So I started doing some research and realized it was a very different population I was dealing with. Most of these people weren't addicted to alcohol or drugs, they were binge drinkers. There have been studies that found that 88% of impaired driving incidents involved binge drinking. The defendant's on my docket could tie one on one day and then leave alcohol alone until the next weekend. However, the docket was loaded with people whose decision making process was impaired by emotional dysregulation, cognitive deficits, personality disorders and other mental health disorders, particularly anxiety disorders, all of which lead to antisocial thinking and behavior. As you can imagine, the interventions I now impose on this group of offenders is substantially different than when I thought the only problem I needed to intervene with was their addiction to drugs or alcohol.

As I said before there are not a shortage of impaired driving cases in the justice system. One of the side effects of good law enforcement is that all of those people are brought into the system and have to be dealt with. In trying to triage the cases and decide which cases should receive the most resources in terms of interventions and supervision, the justice system has attempted to be data driven. We have long known that repeat offenders are over represented in fatal crashes. So while attempting to triage and apply resources effectively, it was easy to default to addressing only repeat offenders. The problem with that approach is that we're not doing anything to intervene with that first offender who is likely to be the second offender involved in a fatal crash. But now, with these tools we can.

The tools that you have seen demonstrated today have the potential to transform the manner in which the criminal justice system handles impaired driving cases. We will finally have a means of identifying the potential repeat offender and apply limited resources to that specific population, and it is easy to envision how these tools might fit into the existing system.

Many states already have statutory mandates that require all impaired offenders to go through a screening and assessment before they are sentenced, or as part of the administrative license sanction process. However, the focus of those screenings is most often merely to determine if there is a substance abuse disorder that requires attention. Unfortunately, as you have seen from the presentations today, that isn't our target population. Our target population is the people we can identify as having the traits that make them likely to recidivate. By substituting these new tools for the tools being used to screen for only substance abuse disorders, we can change our focus to the relevant population.

One of the things we need to remember is the research that shows that the sooner you move a person from date of offense to entry into treatment, the more effective the intervention. I had the opportunity to evaluate one of the DWI programs I was working in where we reduced the period of time from date of arrest to date of sentencing from several months to several weeks, without impacting the due process rights of the defendant. Our research showed that the most important factor in improving outcomes was that reduction in time.

There are opportunities to in every jurisdiction to use these tools early in the justice process. When I was at the misdemeanor court, it was relatively easy for me to implement programs such as the DWI court because it was only a 2 judge bench, we employed the probation officers, and basically we could do what we thought best within the bounds of our constitution and statutes. When I went to the felony court, it was a bit more difficult. There were 19 judges and the executive branch employed the probation department. But we have a very robust and progressive pretrial services division. Even though I had to wait a month and a half from date of plea to date of sentence, Pretrial Services agreed to assess, refer and monitor defendants awaiting sentencing so we could quickly move people into treatment. This is just an example of what can be accomplished when everyone is educated on the best practices.

In case you are asking the question – what do you do with this group of defendants once you identify them as being likely to recidivate, the good news is that we have come a long way in behavioral health treatment just in the last decade.

I remember when I first got involved in drug treatment courts, the wisdom was to not accept anybody in your program with a mental health disorder because they weren't amenable to substance abuse intervention. That thinking had to change when we realized that there was such a large overlap between mental health and substance abuse disorders. It required us all to learn about effective mental health treatment. The next bit of advice was that it was ok to assume you could improve mental health but there was nothing that could be done with personality disorders. Well, now we know that even that can be addressed. We have learned modalities that allow us to intervene in criminal thinking, and criminal behaviors. Cognitive behavioral therapy has become the norm. So, there are interventions that will reduce the likelihood of reoffending, even in this difficult, recalcitrant population and now we are able to identify where we should direct our resources.

One of the other benefits of a system like CARS is that when fully implemented, it allows us to engage in the sort of cross-system collaboration that is so sorely needed in the justice system. Because judges are judges and not treatment providers, we often don't know what the appropriate intervention would be, nor who is available to provide the service. With the cataloguing of local service providers that can be accomplished with CARS, it helps us to bridge that gap.

So, needless to say, I am very excited about the advent of these tools and the research that will hopefully continue in this area, and so are many, many judges across the country. We know we are part of the equation when it comes to reducing recidivism in the impaired driving population, and this sort of research is finally making it feasible for us to be a part of the solution.